IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NORTH CAROLINA SOUTHERN DIVISION No. 7:11-CV-138-D

OWEN HARTY,)	
)	
Plaintiff,)	
)	
v.)	ORDER
)	
WAFFLE HOUSE, INC.,)	
)	
Defendant.)	

On July 5, 2011, Owen Harty ("Harty" or "plaintiff"), filed suit under Title III of the Americans with Disabilities Act ("ADA"), 42 U.S.C. §§ 12181–12189. Harty names Waffle House, Inc. ("Waffle House" or "defendant") as defendant and seeks injunctive relief [D.E. 1]. On August 10, 2011, Waffle House filed a motion to dismiss under Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6), arguing that plaintiff lacks Article III standing [D.E. 6]. On August 17, 2011, Waffle House filed a motion to stay further proceedings pending resolution of the motion to dismiss [D.E. 10]. On September 1, 2011, Harty responded in opposition to the motion to dismiss [D.E. 13–14]. On September 19, 2011, Waffle House replied [D.E. 16].

The court is very familiar with Article III's standing requirements and the governing standard. See, e.g., Nat'l Alliance v. Waffle House, Inc., No. 5:10-CV-385-D, [D.E. 52] slip op. at 2-5 (E.D.N.C. Sept. 29, 2011). In light of Harty's affidavit [D.E. 15], Harty has demonstrated a sufficient "injury in fact" to establish standing. Accordingly, Waffle House's motion to dismiss pursuant to Rule 12(b)(1) is denied.

Waffle House also argues that Harty's complaint should be dismissed pursuant to Rule 12(b)(6) for failure to state a claim. Waffle House's Rule 12(b)(6) argument also is premised on

Harty's failure to allege a sufficient injury in fact. The court has reviewed the amended complaint under the governing standard. See, e.g., Fed. R. Civ. P. 12(b)(6); Ashcroft v. Iqbal, 129 S. Ct. 1937, 1949 (2009); Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555–56, 563 (2007); Coleman v. Md. Ct. of Appeals, 626 F.3d 187, 190 (4th Cir. 2010), cert. granted, 131 S. Ct. 3059 (2011); Giarratano v. Johnson, 521 F.3d 298, 302 (4th Cir. 2008); Goodman v. Praxair, Inc., 494 F.3d 458, 464 (4th Cir. 2007) (en banc); Kloth v. Microsoft Corp., 444 F.3d 312, 319 (4th Cir. 2006). Waffle House's motion to dismiss pursuant to Rule 12(b)(6) is denied.

In sum, defendant's motion to dismiss [D.E. 6] is DENIED. Defendant's motion to stay proceedings [D.E. 10] is DENIED AS MOOT.

SO ORDERED. This 30 day of September 2011.

JAMES C. DEVER III
United States District Judge